Calendar No. 306

100TH CONGRESS *1st Session*	SENATE	REPORT 100-153

RAILROAD SAFETY ACT OF 1987

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1539

SEPTEMBER 1, 1987.—Ordered to be printed
Filed, under authority of the order of the Senate of August 7 (legislative day, August 5), 1987

U.S. GOVERNMENT PRINTING OFFICE
91-010 WASHINGTON : 1987

S263-24

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
DONALD W. RIEGLE, JR., Michigan
J. JAMES EXON, Nebraska
ALBERT GORE, JR., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia
LLOYD BENTSEN, Texas
JOHN F. KERRY, Massachusetts
JOHN BREAUX, Louisiana
BROCK ADAMS, Washington

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
NANCY LANDON KASSEBAUM, Kansas
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin
PAUL S. TRIBLE, Virginia
PETE WILSON, California
JOHN MCCAIN, ARIZONA

RALPH B. EVERETT, *Chief Counsel and Staff Director*
W. ALLEN MOORE, *Minority Chief of Staff*

Calendar No. 306

100TH CONGRESS
1st Session

SENATE

REPORT
100-153

RAILROAD SAFETY ACT OF 1987

SEPTEMBER 1, 1987.—Ordered to be printed

Filed, under authority of the order of the Senate of August 7 (legislative day, August 5), 1987

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1539]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1539) to amend the Federal Railroad Safety Act of 1970 and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The bill, S. 1539, as reported, would reauthorize the Federal rail safety program for two years, in the sum of $40,649,000 for fiscal year 1988 and in the sum of $41,868,470 for fiscal year 1989. The bill would also make certain changes and improvements in the Federal Railroad Safety Act of 1970.

BACKGROUND AND NEEDS

The Department of Transportation (DOT), acting through the Federal Railroad Administration (FRA), is responsible for rail safety. The Federal Railroad Safety Act of 1970 consolidated and clarified DOT's regulatory authority over all areas of railroad safety, and granted broad inspection, injunctive and penalty powers. To supplement the Federal enforcement effort, the Federal Railroad Safety Act of 1970 also established a State safety grant-in-aid program whereby the Federal Government reimburses the States for up to 50 percent of the costs of State safety inspectors,

with the States having certain investigative, surveillance, and enforcement powers with respect to Federal safety laws. Thirty-one States currently receive State participation grants.

The 1970 Safety Act has been amended several times to focus and strengthen DOT's rail safety program. However, the authorizations for the FRA safety program and the State participation program expired at the end of fiscal year 1984 and attempts to reauthorize the programs have been unsuccessful. In spite of this, both programs have continued in operation through funds appropriated for these purposes.

In 1984, the Senate Commerce Committee approved a reauthorization of the Federal rail safety program, although this legislation was not acted upon by the full Senate. Subsequently, during the 99th Congress, the Senate and the House each approved rail safety authorization legislation, although final action on an authorization bill was not achieved due to an unresolved controversy over amendments included in the House bill.

Recently, rail safety has received a great deal of additional attention, much of it arising out of the collision on January 4, 1987, between an Amtrak train the three Conrail locomotive units. This accident, near Chase, MD, resulted in 16 deaths and over 170 injuries. The incident has focused attention on a number of issues including alcohol and drug testing, qualifications and licensing of railroad operating personnel, the adequacy of the current Federal safety and enforcement mechanisms, and the safety of railroad passenger traffic.

Legislative History

The Surface Transportation Subcommittee has held two hearings on the issue of rail safety during this Congress. On February 17, 1987, Senator Exon chaired the subcommittee's initial hearing on this topic, during which testimony was received regarding the overall level of safety in the rail industry. On June 2, 1987, Senator Exon chaired a second hearing on the issues of rail safety. This hearing focused on the experiences of railroad workers in the safety area and on legislative proposals by the FRA, Senator Frank Lautenberg, and rail labor.

Witnesses who testified at one or both of these hearings included representatives of the FRA; the National Transportation Safety Board; the Railway Labor Executives' Association (RLEA), and the Association of American Railroads. Other witnesses included a panel of railroad workers representing various crafts, the father of one of the victims killed in the Amtrak/Conrail collision, Senator Lautenberg and Representative Cardiss Collins.

On July 23, 1987, as a product of these hearings, Senator Exon introduced S. 1539, the Railroad Safety Act of 1987. Cosponsors of this measure included Senators Hollings, Danforth, and Kasten. Other measures introduced in the area of rail safety and referred to the Committee include S. 1098, introduced by Senator Lautenberg and cosponsored by Senator Mikulski, and S. 1558, the FRA's rail safety proposal which was introduced by Senator Kasten by request.

On July 28, 1987, the Committee met in open executive session to consider S. 1539. This measure was ordered reported, with one objection relating to penalties, after adoption of an amendment to increase the supplemental remedy in the bill from $5,000 to $10,000 in damages, including punitive damages, that may be assessed against a railroad for harassment of an employee who reports a safety violation.

Summary of Major Provisions

This legislation seeks to reauthorize the Federal rail safety program at levels sufficient to ensure that the program is continued in full force. These levels should also ensure funding necessary to enable the FRA to undertake the safety improvements required in this legislation. This bill does not include certain provisions proposed by the FRA, and others by the RLEA for which there was insufficient documentation in terms of safety need. Nor were provisions included in this bill which the Committee believes are better addressed through collective bargaining or by rulemaking. The limited amount of funds available to the FRA requires the Committee to determine its safety priorities carefully and to avoid efforts that could divert resources or otherwise adversely affect the FRA and State inspection and enforcement efforts.

As reported, S. 1539 would:

1. Reauthorize the Federal rail safety program for two years in the sum of $40,649,000 for fiscal year 1988 and $41,868,470 for fiscal year 1989;
2. Authorize the FRA to sanction and penalize individuals for violations of the Federal safety laws;
3. Increase the current maximum civil penalty of $2500 per day per violation to a new maximum of $10,000 per day per violation;
4. Require the FRA to conduct a rulemaking and implement a program within 18 months to ensure proper training and qualifications of individuals who operate trains;
5. Provide access to the National Driver Register (NDR) for railroad employers, prospective employers, and the FRA;
6. Expedite consideration of grievance claims and authorize supplemental damages, including punitive damages, not to exceed $10,000 for harassment of an employee for reporting of safety violations;
7. Make certain safety-related improvements on Amtrak eligible for funding under the Northeast Corridor Improvement Project;
8. Clarify the FRA's jurisdiction over the safety of high-speed rail systems;
9. Clarify that the FRA's subpoenas and orders are enforceable in federal courts; and
10. Require the FRA to study and report to Congress on a proposal to assess user fees to cover the costs of the Federal rail safety and railroad noise control programs.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 1987.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1539, the Railroad Safety Act of 1987.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1539.
2. Bill title: Railroad Safety Act of 1987.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, July 28, 1987.
4. Bill purpose: S. 1539 would authorize appropriations of $40.6 million and $41.9 million in fiscal years 1988 and 1989, respectively, for rail safety activities of the Department of Transportation. Congress appropriated $36.7 million for this program in fiscal year 1987.

This bill would make a number of substantive amendments to the Federal Railroad Safety Act of 1970. It would give the Federal Railroad Administration (FRA) the authority to apply rail safety laws to individuals, as well as railroads, and would require the FRA to establish a program ensuring minimum qualification for operators of railroads. In addition, an amendment to the National Driver Register Act would provide rail employers and the FRA with access to information in the register concerning employes and potential employees. S. 1539 would also require the FRA to prepare a report to the Congress on the need and feasibility of user fees to fund federal rail safety activities.

Another section in the bill would amend the Railroad Revitalization and Regulatory Reform Act of 1976 to make a number of additional projects eligible for funding under the Northeast Corridor Improvement Program. No additional funding would be authorized for this program, however.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1988	1989	1990	1991	1992
Authorization Level	40.65	41.87			
Estimated Outlays	30.48	39.50	9.39	2.08	1.07

The costs of this bill fall within budget function 400.

Basis of estimate: CBO assumed that the full amounts authorized will be appropriated. The authorization levels are those specified in the bill. Estimated outlays are based on historical spending patterns.

6. Estimated cost to State and local governments: States would bear some increased administrative burden as a result of the provision authorizing access to the National Driver Register. The Department of Transportation has contracted with four states to conduct a project to test a new system that would handle inquiries concerning motor vehicle operators, as required by the National Driver Register Act of 1982. This new system will eventually be extended to other states, depending on the results of the pilot project and the availability of funds in future years. While it is still early to estimate the incremental cost to states for also handling inquiries regarding rail employees, CBO does not expect it to be significant.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Majorie Miller.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

This legislation grants new authority to the FRA for application of the Federal rail safety laws to employees (management and labor) of the railroad industry who perform services covered under the Hours of Service Act or who perform in other safety-sensitive positions. The Committee estimates that approximately 174,000 individuals would be covered by this legislation.

ECONOMIC IMPACT

The economic impact of the legislation will primarily affect the FRA, railroad companies, and railroad employees. With respect to the FRA, under the bill's provisions granting the FRA authority to sanction individuals (management and labor) for rail safety violations, the FRA likely would incur some additional enforcement costs, which would be somewhat offset by the actual amounts collected as fines. The FRA also could incur some additional administrative and research costs to comply with the rulemaking requirement to issue Federal minimum qualifications for train operators.

Some additional resources might also be expended by the FRA to conduct a study on the need to impose user fees as a source of funding for the Federal railroad safety and noise control programs. Costs related to the overall Federal safety program and the State inspection programs are accounted for in the authorization section of the bill, which continues these programs essentially at the existing level and thus would have no significant budgetary impact.

With respect to the railroad companies, increased penalties could be imposed on railroad companies found in violation of railroad safety laws. The current maximum civil penalty of $2,500 per day per violation set in 1970 would be increased to $10,000. Additionally, an anti-harassment provision in the bill would provide employees a supplemental Railroad Labor Act remedy of up to $10,000 in damages, including punitive damages, paid by a railroad to an employee harassed by that railroad for reporting safety violations.

Under the bill's provisions granting the FRA authority to sanction and impose civil penalties against individuals for violations of the safety laws, such individuals would incur costs associated with penalties and related administrative and judicial review processes.

PRIVACY

The bill's provision allowing employers, prospective employers, and the FRA to access the NDR may be construed by some affected as an invasion of privacy. However, the Committee believes access to records that may show a series of serious traffic infractions is useful in determining the fitness of an individual to serve in a safety-sensitive position with a railroad. Individuals would have an opportunity to comment on these records, and any circumstances that could mitigate the import of the violation could be brought to the attention of employers, prospective employers, and the FRA.

PAPERWORK

With respect to paperwork requirements, the Committee does not foresee a significant increase in the current level as a result of this legislation unless the FRA decides to establish a Federal licensing program for train operators after the rulemaking process mandated in the bill on train operator qualifications is completed. However, some paperwork would be required because at a minimum, railroads will have to submit documentation to the FRA showing that they have qualification programs for train operators which are in compliance with Federal guidelines and meet standards necessary to ensure safety and the fitness of those operating trains.

Section-by-Section Analysis

SECTION 1.—SHORT TITLE

This section provides that the legislation is to be entitled the "Railroad Safety Act of 1987."

SECTION 2.—AUTHORIZATION FOR APPROPRIATIONS

This section would amend section 214 of the Federal Railroad Safety Act of 1970 (Safety Act) to authorize funding for fiscal years 1988 and 1989 for the Federal rail safety program. A total of

$40,649,000 would be authorized for the FRA's general safety operations and State grants in fiscal year 1988, and sums not to exceed $41,868,470 would be authorized for these purposes for fiscal year 1989.

The fiscal year 1988 authorization level was requested by the administration and represents a $2,290,000 funding increase over the fiscal year 1987 appropriation level. It assumes funding in the sum of $1,350,000 for continuation of the State safety grant-in-aid program for fiscal year 1988. The fiscal year 1989 authorization figure takes into account projected inflation of three percent over the fiscal year 1988 authorization levels for the Federal safety and State participation programs.

This section recognizes that the FRA's rail safety program has been generally successful in improving the overall level of rail safety in recent years. However, the Committee is of the opinion that additional steps need to be taken to further improve rail safety. The authorization levels contained in this section should provide the FRA with the resources needed to continue the current Federal safety programs and to make additional improvements such as those set forth in this legislation.

SECTION 3.—INCREASED PENALTIES; LIABILITY OF INDIVIDUALS

This section would amend section 209 of the Safety Act to provide the Secretary of Transportation (Secretary) with authority to sanction and penalize individuals for violations of the Federal safety laws. It would also increase the current maximum civil penalty of $2,500 to a new maximum of $10,000.

Subsection (a) would amend the Safety Act to provide the Department of Transportation, acting through the FRA, with enforcement authority over "persons", which include both railroads and any individual who performs service under the Hours of Service Act or who performs other safety-sensitive functions for a railroad.

At present, the FRA's enforcement authority is limited to actions against railroad companies for violations of Federal safety laws and regulations. Railroad companeis are then left to seek appropriate disciplinary action against any employee whose conduct results in a violation.

The Committee is of the opinion, however, that this procedure is not adequate to ensure safety since it depends upon individual railroads to remedy violations through private disciplinary proceedings and thereby fails to provide the certain enforcement that is necessary when safety is at issue. This procedure also denies Federal inspectors and enforcement officials the direct authority they need to see that violations of safety laws, regulations, rules and orders are addressed. For these reasons, this legislation authorizes the FRA to take direct enforcement action against individuals, as well as railroad companies. It would not otherwise affect private proceedings as between railroads and their employees.

The grant of enforcement authority accorded by this legislation is not unique among our safety laws. Rather, it is the current absence of Federal safety enforcement authority over individuals involved in general rail transportation that is out of the ordinary when compared with other transportation modes. For example, in

the aviation sector, the Federal Aviation Administration has the authority to take action against individuals for aviation safety violations. Similarly, the Federal Government and the States share direct enforcement authority over operators of commercial motor vehicles. Even in the rail mode, the FRA has a measure of authority over individuals who violate the Hazardous Materials Transportation Act or its regulations. This legislation would ensure that the FRA has direct authority to pursue all violations involving rail safety, not just those in the area of hazardous materials.

In delineating individuals who would be subject to FRA enforcement authority, this section identifies those employees now covered by the Hours of Service Act and other employees who perform safety-sensitive functions, as those functions are determined by the Secretary. Employees covered by the Hours of Service Act include: (1) those engaged in or connected with the movement of any train (primarily including engineers, brakemen, firemen, and conductors); (2) those who dispatch, report, transmit, or receive orders pertaining to or affecting train movements (such as operators and dispatchers); and (3) those engaged in installing, repairing, or maintaining signal systems (such as signalmen and certain electricians).

In addition, the bill would cover others who perform safety-sensitive functions, as those functions are determined by the Secretary. In determining which employees shall be considered to serve in safety-sensitive positions, the Secretary shall consider the need to include: (1) those who install, repair, or maintain track and roadbed; (2) those who inspect, maintain, or repair train equipment (locomotives and cars); (3) those responsible for conducting training and testing (including alcohol and drug testing) of employees required by the FRA's safety regulations; and (4) those responsible for properly reporting accidents and injuries. This bill is also intended to apply to railroad managers, supervisors, and agents when they perform these functions and when they could be in a position to direct that violations of the regulations be committed.

Subsection (b) would amend the Safety Act to provide that for violations of any safety rule, regulation, order, or standard, the FRA may assess a civil penalty of not less than $250 nor more than $10,000, as the Secretary deems reasonable. The current maximum civil penalty of $2,500 per day per violation was set in 1970, and the Committee is of the opinion that the maximum penalty level should be increased to account for the effects of inflation since 1970, and to serve as a better deterrent against the commission of safety violations.

It is expected that the Secretary would act expeditiously to set penalty levels commensurate with the severity of violations, with imposition of the maximum penalty reserved for violation of any regulation where warranted by exceptional circumstances. In imposing penalties against individuals, the Secretary should also give particular attention to an individual's ability to pay, as provided for in Federal claims collection guidelines.

Subsection (c) provides that any person violating any such rule, regulation, order, or standard may be assessed the civil penalty applicable to the standard violated. However, it further provides that a willful violation is necessary for any assessment of a civil penalty against an individual. Thus, negligent actions by individuals would

not subject them to monetary penalties. By limiting the assessment of civil penalties against individuals to instances involving willful violations of safety rules, regulations, standards, or orders, the Committee is thereby ensuring that civil penalties will only be imposed in those situations where an individual has a choice, and freely elects to violate a safety rule, regulation, standard, or order.

This subsection further provides that penalties may be recovered through suits brought in the district court of the United States for the judicial district in which such individual resides. It is the Committee's understanding that in pursuing the imposition of civil penalties, the FRA attempts to resolve penalty assessments through negotiation and that court proceedings are only pursued in the event that a resolution cannot be obtained.

In this regard, the Committee contemplates that the Secretary would issue specific guidelines that would ensure fairness when the FRA seeks to exercise its civil penalty authority over an individual. These procedures should recognize differences that may exist between a railroad's ability to defend itself in a proceeding of this sort and the ability of an individual to do so. The Committee would expect that at minimum procedures be put in place to ensure that individuals are properly notified and have the opportunity to respond to actions under this subsection. The Committee would expect the FRA to consider these same factors in making a decisioin to seek judicial relief, recognizing the burden on individuals that could result from such an action.

This section also substitutes the word "may" for the word "shall" in the operative civil penalty provision. This would clarify the Secretary's authority to use discretion in determining when to assess penalties against railroads and individuals.

Subsection (d) would amend the Safety Act to provide the Secretary with the authority to direct that an individual be prohibited from serving in a safety-sensitive capacity in the rail industry for a necessary period of time if, after notice and opportunity for a hearing, the Secretary determines that an individual has violated a safety rule, regulation, order, or standard, as would indicate such individual is unfit for performance of a safety-sensitive task.

This subsection would authorize the Secretary to remove unfit employees from safety-sensitive positions on a railroad. As with the civil penalty authority, this includes management and supervisory personnel, in addition to other rail workers.

Under the process envisioned by this subsection, it would not be necessary to depend upon a railroad's internal disciplinary process to ensure that employees who are unfit for service are removed from safety-sensitive positions. Pursuant to the subsection, the Secretary would have the burden to prove that an employee's violation of a safety law, rule, regulation, standard, or order indicates that such individual is unfit for performance of a safety-sensitive task. If that burden were met, after notice and opportunity for an administrative hearing, with the attendant protection guaranteed thereby, the Secretary could order any appropriate sanction, from suspension to disbarment from safety-related functions.

Under this subsection, as contrasted with the civil penalty authority addressed in subsection (c), the Secretary would not have to prove that a violation was willful. Rather, any action, including

negligent actions, would be grounds for an appropriate sanction which responds to the gravity of a particular violation, the likelihood that another violation would occur, and the risk to safety that could occur were the individual to serve or continue to serve in a safety-sensitive position.

Under this procedure, an employee would be entitled to a complete, on-the-record hearing, and the Secretary's decision would be judicially reviewable. This section also reaffirms the Secretary's ability to take emergency action under section 203 of the Safety Act where an employee poses an imminent danger of death or injury if the employee were to continue to work in his or her job.

SECTION 4.—QUALIFICATIONS OF OPERATORS OF TRAINS

This section would amend section 202 of the Safety Act to ensure that within 18 months after the date of enactment of this subsection, the Secretary shall issue rules, regulations, standards, and orders concerning the minimum qualifications of operators of trains. (These employees are referred to as engineers on most railroads. However, because terminology differs and because there is no intent to limit these regulations to members of any specific labor organizations, the term "train operators" is used to refer to those who actually operate the controls of the locomotive of a moving train.) At present, there are no Federal programs, standards, or guidelines in place regarding the qualifications of train operators. The Committee is of the opinion that this is a shortcoming in our Federal safety program since there currently is no certainty that these individuals are properly trained or qualified to serve in these highly safety-sensitive positions.

In hearings held before the Surface Transportation Subcommittee, several witnesses addressed the need for Federal standards for operators of trains. This need was not expressed in a manner to suggest that engineers or other operators of trains are generally unqualified to perform their assigned duties. Rather, what causes concern is the lack of any means to ensure that these individuals are properly trained or fit to serve in these positions. The absence of a Federal program for operators of trains has also been contrasted with Federal programs that are currently in place to ensure that operators of aircraft and commercial motor carriers are qualified for their service in similarly safety-sensitive positions.

In this section, the Committee is not intending to specify the particular means that must be chosen to ensure that operators of trains are properly trained and fit for service. Testimony before the Surface Transportation Subcommittee vaired, for example, as to whether a requirement for formal Federal licensing of engineers is necessary or whether other procedures might be adopted to ensure that operators are qualified. Concerns were also raised regarding the cost to the Federal Government of a licensing program and its impact on the FRA's current operations.

In recognition of the careful attention that needs to be given to a variety of considerations in regard to this issue, yet keeping in mind the Committee's strong interest in ensuring the fitness of operators, the Committee has provided the FRA with the discretion to determine which among a range of options might best serve to

ensure that operators of trains are qualified. Options specified in this legislation for consideration by the FRA include the establishment of an engineer licensing program, uniform minimum qualification standards, and a program of review and approval of each railroad's qualification standards.

In analyzing these options the FRA should give consideration both to the adequacy of a program that would ensure that operators are properly trained and also to the need to ensure that individual operators satisfy any Federal fitness requirements, including physical and medical requirements, that might be established for these important safety-related positions. In regard to fitness, the FRA shall consider procedures that might be necessary to enable the FRA to determine the extent to which individual operators satisfy Federal qualifications. Means that might satisfy this range from reporting requirements to provisions for FRA access to records for review as necessary to determine that a particular operator satisfies Federal standards.

In an effort to follow the FRA's progress in this regard, this section also provides for a report to Congress on this proceeding no later than 12 months after the date of enactment of this legislation. This report would include an evaluation of anticipated results of the proceeding.

SECTION 5—ACCESS TO THE NATIONAL DRIVER REGISTER

This section would amend section 206 of the National Driver Register Act of 1982 to provide increased access to information contained in the NDR.

Subsection (a) would allow an individual who is employed by or who seeks employment with a railroad and who performs or would perform services covered by the Hours of Service Act or other safety-sensitive functions as determined by the Secretary to request the chief driver licensing official of a State to transmit NDR information about the individual to the individual's employer, prospective employer, or the FRA.

The NDR is not accessible when an individual applies for a driver's license or seeks to operate a commercial motor vehicle. In the rail safety hearings before the Surface Transportation Subcommittee, consideration was also given to the use of information regarding an individual's record of driver's license suspensions, revocations, or similar actions as an indication of the fitness of an individual to serve in a safety-sensitive position with a railroad. Testimony before the subcommittee indicated that to the extent this information may be available through individual States, this information is neither widely nor uniformly available, nor are there guidelines for its use.

The Committee is of the view that railroad safety could be improved through uniform access to information regarding revocations, suspensions, or other driving-related activities. For this reason, this legislation authorizes individuals to request that NDR information by provided to their employer, prospective employer, or the FRA.

This section simply provides for statutory access to these records. It is intended that any decisions on when or how to use such date

for purposes of determining the qualifications of Hours of Service or other safety-sensitive personnel would be the subject of future rulemaking conducted on the public record. The Committee intends that when the FRA conducts such a rulemaking, consideration should be given to the appropriate uses for this information. Specifically, the FRA should set guidelines on the need for access to this information and its relevance as an indicator of the fitness of an individual to serve in a safety-sensitive position. It may be expected, for example, that information in the NDR might have more relevance or be given greater weight in determining the fitness of an operator of a train than for individuals in other positions with a railroad.

Under this section, the Federal Railroad Administrator, employer, or prospective employer would make NDR information available to the individual, who would be given an opportunity to comment on its in writing. This would enable an individual to explain or seek to mitigate the impact of an otherwise poor driving record. This subsection also provides that access to information which was entered in the NDR more than three years before the date of a request would be prohibited, unless the information related to suspensions or revocations still in effect on the date of the request.

Subsection (b) would clarify the access to information submitted to the existing NDR by States during the transition to the new NDR contemplated by current law.

SECTION 6.—PROTECTION OF EMPLOYEES AGAINST DISCRIMINATION

The Committee is opposed to discrimination or harassment of railroad employees for any reason. In particular, harassment of an employee for reporting or testifying regarding a safety violation should be strongly discouraged. Railroad safety can best be achieved if employees work in an environment in which they feel free to come forward and report safety violations and unsafe conditions which they may observe. To protect employees against harassment or discrimination, this section would amend section 212 of the Safety Act to provide for expediting of any proceeding with respect to a dispute, grievance, or claim for improper discharge or discrimination and which arises from an employee's filing of a complaint, institution of a proceeding, or testifying regarding the enforcement of the railroad safety laws. Any such dispute shall be resolved by the Adjustment Board or any other Board of Adjustment created under section 3 of the Railway Labor Act, within 180 days after its filing.

In addition, current law limits damages for discrimination to those cases in which the discrimination results in a discharge, suspension, loss of pay, or other monetary damages. However, harassment can take many forms and can have an equally chilling effect on an employee's willingness to report safety violations even if the discrimination does not result in a direct job or monetary loss. For this reason and to protect against other forms of harassment, this section also provides that if the discrimination against an employee is in a form other than discharge, suspension, or loss of pay, and if no other remedy is available, the appropriate Board may award the

aggrieved employee reasonable damages, including punitive damages, up to a maximum total of $10,000.

SECTION 7.—NORTHEAST CORRIDOR IMPROVEMENT PROJECT

This section would amend section 704 of the Railroad Revitalization and Regulatory Reform Act of 1976 to make eligible for funds provided under the Northeast Corridor Improvement Program certain Amtrak-related safety projects, including: improvements to communication and signal systems; improvement in electric traction systems; the installation of baggage rack restraints, seat back guards, and seat lock devices on certain passenger cars operating within the Northeast Corridor; the installation of event recorders and electronic warning devices on locomotives operating within the Northeast Corridor; the acquisition of cab signal test boxes; and installation of wayside loop code transmitters for use on the Northeast Corridor.

SECTION 8.—JURISDICTION OVER HIGH SPEED RAIL SYSTEMS

This section would amend section 202 of the Safety Act to ensure that all forms of non-highway ground transportation that run on rails or electromagnetic guideways, except for certain urban transit operations, shall be subject to the Safety Act. This provides the DOT and the FRA with jurisdiction over newly emerging technologies and high speed rail systems.

This section also incorporates into its definition of "railroad" the language added to the Safety Act in 1983 concerning commuter and other short-haul passenger service. In addition, this section would strike from section 202 a number of subsections that relate to statutory mandates, already met, for regulations or reports on specific subjects.

SECTION 9.—ENFORCEMENT OF SUBPOENAS AND ORDERS

This section would amend section 208 of the Safety Act to confirm the Attorney General's authority to seek enforcement of orders and subpoenas issued by the Secretary under section 208(a) and of emergency safety orders issued under section 203 of the Safety Act, through a proceeding in an appropriate federal district court. The Safety Act authorizes the Secretary to issue such directives when necessary to achievement of the safety program, but except for the provision on compliance orders, has no express provision for the enforcement of such directives. This technical amendment would make express the Attorney General's implicit authority to seek enforcement of such subpoenas and orders.

SECTION 10.—STUDY

The FRA has proposed that railroads be assessed user fees to recover costs associated with the Federal rail safety and railroad noise control programs. However, the Committee is of the opinion that a record has not been developed to justify the imposition of user fees at this time. For this reason, this section provides that no later than six months after enactment, the Secretary shall report to the Congress on the need and feasibility of imposing user fees as a source of funding the cost of administering the Safety Act and

other Federal laws relating to railroad safety and railroad noise control.

SECTION 11.—CONFORMING AMENDMENTS

This section would amend section 202 of the Safety Act and the general grant to the Secretary of regulatory authority over railroad safety to clarify that this authority would extend to railroad employees.

SECTION 12.—MISCELLANEOUS

This section would strike existing section 211(c) of the Safety Act because it concerns details of a special report on railroad safety that was required for submission to the Congress in 1976, an obligation which has been fulfilled.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (exising law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman).

FEDERAL RAILROAD SAFETY ACT OF 1970

SEC. 202. RAIL SAFETY REGULATIONS.

(a) The Secretary of Transportation, (hereafter in this title referred to as the "Secretary") shall (1) prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety supplementing provisions of law and regulations in effect on the date of enactment of this title, and (2) conduct as necessary, research, development, testing, evaluation, and training for all areas of railroad safety. *This authority specifically includes the authority to regulate all aspects of railroad employees' safety-related behavior, as well as the safety-related behavior of the railroads themselves.* However, nothing in this title shall prohibit the bargaining representatives of common carriers and their employees from entering into collective bargaining agreements under the Railway Labor Act, including agreements relating to qualifications of employees, which are not inconsistent with rules, regulations, orders, or standards prescribed by the Secretary under this title. Nothing in this title shall be construed to give the Secretary authority to issue rules, regulations, orders, and standards relating to qualifications of employees, except such qualifications as are specifically related to safety.

(b)–(d) * * *

[(e) The Secretary shall issue initial railroad safety rules, regulations, orders, and standards under this title based upon existing safety data and standards, not later than one year after the date of enactment of this title. The Secretary shall review and, after hearing in accordance with subsection (b) of this section, revise such rules, regulations, orders, and standards as necessary.]

(e) The term railroad as used in this title includes all forms of non-highway ground transportation that run on rails or electromag-

netic guideways, except for rapid transit operations within an urban area that are not connected to the general railroad system of transportation. The term railroad specifically refers, but is not limited, to (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, including any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

(f)–(h) * * *

[(i) The Secretary shall, within one year after the date of enactment of the Federal Railroad Safety Authorization Act of 1982, issue rules, regulations, orders, and standards to apply appropriate safety principles to track used for commuter or other short-haul rail passenger service in a metropolitan or suburban area.

[(j) The Secretary shall, within 60 days after the date of enactment of the Federal Railroad Safety Authorization Act of 1982, report to the Congress on whether to issue rules, regulations, orders, and standards to require that the leading car of any railroad train in operation after July 1, 1983, be equipped with an acceptable form of mounted oscillating light.

[(k) As used in this section, the term "all areas of railroad safety" includes the safety of commuter or other short-haul rail passenger service in a metropolitan or suburban area, including any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979.]

(j)(1) The Secretary shall, within 18 months after the date of enactment of this subsection, issue rules, regulations, standards and orders concerning the minimum qualifications of the operators of trains. In issuing such rules, regulations, standards and orders, the Sectetary shall consider the establishment of an engineer licensing program, uniform minimum qualification standards, and a program of review and approval of each railroad's own qualification standards.

(2) Not later than twelve months after the date of enactment of this subsection, the Secretary shall transmit to the Congress a report on the activities of the Secretary under this subsection, together with an evaluation of the rules, regulations, standards and orders the Secretary anticipates will be issued under this subsection.

SEC. 208. GENERAL POWERS

(a) In carrying out his functions under this title the Secretary is authorized to perform such acts including, but not limited to, conducting investigations, making reports, issuing subpenas, requiring production of documents, taking depositions, prescribing recordkeeping and reporting requirements, carrying out and contracting for research, development, testing, evaluation, and training (particularly with respect to those aspects of railroad safety which he finds to be in need of prompt attention), and delegating to any public bodies or qualified persons, functions respecting examimation, inspecting, and testing of railroad facilities, equipment, rolling stock, operations, or persons, as he deems necessary to carry out the provisions of this title. The Secretary is further authorized to issue orders directing compliance with this Act or with any rail-

road safety rule, regulation, order, or standard issued under this Act[; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.] . *In case of contumacy or refusal to obey a subpoena, order, or directive of the Secretary issued under this subsection or under section 203 of this title by any individual, partnership, or corporation that resides, is found, or conducts business within the jurisdiction of any district court of the United States, such district court shall have jurisdiction, upon petition by the Attorney General, to issue to such individual, partnership, or corporation an order requiring immediate compliance with the Secretary's subpoena, order, or directive. Failure to obey such court order may be punishable by the court as a contempt of court.*

SEC. 209. PENALTIES.

(a) It shall be unlawful for any [railroad] *person (including a railroad or an individual who performs service covered under the Act of March 4, 1907, commonly referred to as the Hours of Service Act (45 U.S.C. 61 et seq.) as in effect on the date of enactment of the Railroad Safety Act of 1987, or who performs other safety-sensitive functions for a railroad, as those functions are determined by the Secretary)* to fail to comply with any rule, regulation, order, or standard prescribed by the Secretary under this title.

(b) The Secretary shall include in, or make applicable to, any railroad safety rule, regulation, order, or standard issued under this title a civil penalty for violation thereof [or for violation of section 2 of the Act of May 6, 1910 (45 U.S.C. 39) in such amount, not less than $250 nor more than $2,500, as he deems reasonable.] *in such amount, not less than $250 nor more the $10,000, as the Secretary considers reasonable.*

(c) [Any railroad violating any rule, regulation, order, or standard referred to in subsection (b) of this section shall be assessed by the Secretary the civil penalty applicable to the standard violated.] *Any person violating any rule, regulation, order or standard referred to in subsection (b) of this section may be assessed by the Secretary the civil penalty applicable to the rule, regulation, order or standard violated, except that any penalty may be assessed against an individual only for willful violation.* Each day of such violation shall constitute a separate offense. Such civil penalty is to be recovered in a suit or suits to be brought by the Attorney General on behalf of the United States in the district court of the United States for the judicial district in which such violation [occurred] *occurred, in which the individual resides,* or in which the defendant has its principal executive office. Civil penalties may, however, be compromised by the Secretary for any amount, but in no event for an amount less than the minimum provided in subsection (b) of this section, prior to referral to the Attorney General. The amount of any such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged. All penalties collected under this title, including penalties collected pursuant to section 207 of this title, shall be covered into the Treasury as miscellaneous receipts.

(d)–(e) * * *

(f) Where, after notice and opportunity for a hearing, violation by an individual of any rule, regulation, order, or standard prescribed by the Secretary under this title indicates that such individual is unfit for performance of any safety-sensitive task, the Secretary may issue an order directing that such individual be prohibited from serving in a safety-sensitive capacity in the rail industry for such period of time as the Secretary considers necessary. This subsection shall not be construed to affect the Secretary's authority under section 203 of this title to take such action on an emergency basis.

SEC. 211. ANNUAL REPORT.

(a)–(b) * * *

[(c) SPECIAL REPORT.—The Secretary shall prepare and submit to the President and the Congress, not later than March 17, 1976, a comprehensive railroad safety report. Such report shall—

[(1) contain a description of the areas of railroad safety with respect to which Federal safety standards issued under this Act are in effect (as of June 30, 1975);

[(2) identify any area of railroad safety with respect to which Federal safety standards have been proposed but have not been issued under this Act (as of June 30, 1975);

[(3) identify any area of railroad safety with respect to which Federal safety standards have not been issued under this Act (as of June 30, 1975);

[(4) identify alternative and more cost-effective methods for inspection and enforcement of Federal safety standards, including mechanical and electronic inspection, and contain an evaluation of problems involved in implementing such alternatives, with specific attention to the need for cooperation with the railroad industry;

[(5) identify the areas of railroad safety listed in accordance with paragraphs (1) through (3) of this subsection which involve, or which may involve, State participation under section 206 of this Act;

[(6) contain a description of the railroad safety program which is in effect or planned in each State (as of June 30, 1975), including—

[(A) State program development;

[(B) State plans to participate in program areas listed in accordance with paragraph (1) of this subsection, which are not covered by a State certification or agreement;

[(C) State interest in participating in each program area listed in accordance with paragraphs (2) and (3) of this subsection, following issuance of the applicable safety standards;

[(D) annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out its State program during each fiscal year from 1976 through 1980 together with estimates of the annual costs thereof separately stated as to projections under subparagraphs (B) and (C) of this paragraph;

[(E) the sources from which the State expects to draw the funds to finance such programs; and

[(F) the amount of State funds and of Federal financial assistance needed during each such fiscal year, by category;

[(7) contain a detailed analysis of (A) the number of safety inspectors needed (by industry and Government respectively) to maintain an adequate and reasonable railroad safety program and record; (B) the minimum training and other qualifications needed for each such inspector; (C) the present and projected availability of such personnel in comparison to the need therefor; (D) the salary levels of such personnel in relation to salary levels for comparable positions in industry, State governments, and the Federal Government;

[(8) evaluate alternative methods of alloting Federal funds among the States applying for Federal financial assistance, including recommendations, if needed, for a formula for such apportionment;

[(9) contain a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the nationwide railroad safety program;

[(10) contain a description of the regulations and handling criteria established by the Secretary under the Hazardous Materials Transportation Act specifically applicable to the transportation of radioactive materials by railroad (as of June 30, 1975), together with annual projections of the amounts of radioactive materials reasonably expected to be transported by railroad during each fiscal year from 1976 through 1980 and an evaluation of the need for additional regulations and handling criteria applicable to the transportation of radioactive materials by railroad during each such fiscal year; and

[(11) contain recommendation for any additional Federal and State legislation needed to further realization of the objectives of this Act. Such report shall be prepared by the Secretary, directly or indirectly, after research, examination, study, and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Such report shall include, in an appendix, a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions with respect to the content of such report in its final form.]

SEC. 212 PROTECTION AND RIGHTS OF EMPLOYEES.

(a)–(b) * * *

(c)(1) * * *

[(2) In the case of any violation of subsection (a) or (b) of this section, the Adjustment Board (or any division or delegate thereof) or any other board of adjustment created under section 3 of the Railway Labor Act shall, where appropriate, award backpay to the aggrieved employee and order such employee reinstated to his position.]

(2) In any proceeding with respect to which a dispute, grievance or claim is brought for resolution before the Adjustment Board (or any

division or delegate thereof) or any other Board of Adjustment created under section 3 of the Railway Labor Act (45 U.S.C. 153), such dispute, grievance or claim shall be expedited by any such Board and be resolved within 180 days after its filing. If the violation of subsection (a) or (b) is a form of discrimination other than discharge, suspension, or any other discrimination with respect to pay, and no other remedy is available under this subsection, the Adjustment Board (or any division or delegate thereof) or any other Board of Adjustment created under section 3 of the Railway Labor Act, may award the aggrieved employee reasonable damages, including punitive damages, not to exceed $10,000.

SEC. 214. AUTHORIZATION FOR APPROPRIATIONS.

(a)–(c) * * *

(d) There are authorized to be appropriated to carry out the provisions of this Act not to exceed $40,649,000 for the fiscal year ending September 30, 1988, and not to exceed $41,868,470 for the fiscal year ending September 30, 1989.

[(d)**]** *(3)* Sums appropriated under this section for research and development, automated track inspection, and the State safety grant program are authorized to remain available until expending.

NATIONAL DRIVER REGISTER ACT OF 1982

SEC. 201–SEC. 205 * * *

ACCESSIBILITY OF REGISTER INFORMATION

SEC. 206. (a) * * *

(b)(1) The Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration, for purposes of requesting information regarding any individual who is the subject of any accident investigation conducted by the Board or Bureau of Motor Carrier Safety, may request the chief driver licensing official of a State to obtain information under subsection (a) of this section regarding such individual. The Chairman and Administrator may receive any such information. *Information submitted to the Register by States under Public Law 86–660 (74 Stat. 526) or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.*

(2) Any individual who is employed as a driver of a motor vehicle or who seeks employment as a driver of a motor vehicle may request the chief driver licensing official of the State in which the individual is employed or seeks employment to transmit information under subsection (a) of this section to his employer or prospective employer. An employer or prospective employer may receive such information regarding any such individual, and shall make that information available to the affected individual. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than three years before the date of such request. *Information submitted to the Register by States under Public Law 86–660 (74 Stat. 526) or under this Act shall be subject to access for the purpose of this paragraph*

during the transition to the Register established under section 203(a) of this Act.

(3)–(4) * * *

(5) Any individual who is employed by a railroad or who seeks employment with a railroad and who performs or would perform services covered by the Hours of Service Act (45 U.S.C. 61 et seq.) or other safety-sensitive functions, as determined by the Secretary, may request the chief driving licensing official of a State to transmit information regarding the individual under subsection (a) of this section to his or her employer, prospective employer, or to the Administrator of the Federal Railroad Administration. The Administrator, employer or prospective employer shall make that information available to the individual, who will be given an opportunity to comment on it in writing. There shall be no access to information in the Register under this paragraph which was entered in the Register more than three years before the date of such request, unless such information relates to revocations or suspensions that are still in effect on the date of the request. Information submitted to the Register by the States under Public Law 86-660 (74 Stat. 526) or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of the Act.

RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

SEC. 101—SEC. 702. * * *

FUNDING

SEC. 704. (a) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall complete the Northeast Corridor improvement project in accordance with the goals of this Act to the extent of funds authorized under this Act. There is authorized to be appropriated to the Secretary—

(1) $2,313,000,000 to remain available until expended (A) in order to effectuate the goals of section 703(1)(A)(i) of this title, of which not less than $27,000,000 shall be available to finance the cost of the equipment modification and replacement which States (or local or regional transportation authorities) will be required to bear as a result of the electrification conversion system of the Northeast Corridor pursuant to this title; (B) of which, if the National Railroad Passenger Corporation receives notificationon or before June 1, 1983, from the State of New Jersey that such State has approved a plan, developed in consultation with the National Railroad Passenger Corporation, for the operation of rail passenger service between the main line of the Northeast Corridor and Atlantic City, New Jersey, and if such Corporation determines that such plan is feasible $30,000,000 shall be made available by the Secretary to the National Railroad Passenger Corporation for rehabilitation and other improvements (including upgrading track and the signal system, ensuring safety at public and private highway and pedestrian crossings by improving signals or eliminating such crossings, and the improvement of operational portions of stations related to intercity rail passenger service) on the main

line track between such points, consistent with the plan for operation approved by the State, in order to ensure that such track will be of sufficient quality to permit safe rail passenger service at a minimum of 79 miles per hour not later than September 30, 1985, and to promote rail passenger use of such track; and (C) of which such sums as may be required shall be available for the following projects with respect to the main line of the Northeast Corridor; development of the Union Station in Washington, District of Columbia; installation of 189 track miles of concrete ties with continuously welded rail between Washington, District of Columbia, and New York, New York; renewal of 133 track miles of existing continuously welded rail on concrete tie track between Washington, Distict of Columbia, and New York, New York; installation of reverse signaling between Philadelphia, Pennsylvania, and Morrisville, Pennsylvania, on numbers 2 and 3 tracks; restoration of ditch drainage in concrete tie locations between Washington, District of Columbia, and New York, New York; undercutting of 83 track miles between Washington, District of Columbia, and New York, New York; rehabilitation of bridges between Washington, District of Columbia, and New York, New York (including Hi line); development of a maintenance-of-way equipment repair facility between Washington, District of Columbia, and New York, New York, roadbed stabilization at various locations between Washington, District of Columbia, and New York, New York; automation of Bush River Drawbridge at milepost 72.14; improvements to the New York Service Facility to develop rolling stock repair capability; construction of maintenance-of-way bases at Philadelphia, Pennsylvania, Sunnyside, New York, and Cedar Hill, Connecticut; installation of rail car washer facility at Philadelphia, Pennsylvania; track improvements including high speed surfacing, ballast cleaning, and associated equipment repair and material distribution; rehabilitation of interlockings between Washington, District of Columbia, and new York, New York; painting of Connecticut River, Groton, and Pelham Bay bridges; additional catenary renewal and power supply upgrading between Washington, District of Columbia, and New York, New York; rehabilitation of structural, electrical, and mechanical systems at the 30th Street Station in Philadelphia, Pennsylvania; and installation of evacuation and fire protection facilities in tunnels at New York, New York; *improvements to the communication and signal systems at locations between Wilmington, Delaware, and Boston, Massachusetts, on the Northeast Corridor main line and between Philadelphia, Pennsylvania, and Harrisburg, Pennsylvania, on the Harrisburg Line; improvement to the electric traction systems between Wilmington, Delaware, and Newark, New Jersey; installation of baggage rack restraints, seat back guards and seat lock devices on three hundred forty-eight passenger cars operating within the Northeast Corridor; installation of forty-four event recorders and ten electronic warning devices on locomotives operating within the Northeast Corridor; and acquisition of cab signal test boxes and installa-*

tion of nine wayside loop code transmitters for use on the Northeast Corridor;

○